

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0242

IN THE MATTER OF D.K.D.,

Respondent and Appellant.

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ORDER

FILED

JUN 2 - 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

This is a request to be allowed to file an out-of-time appeal from a March 16, 2010, order of commitment of a developmentally disabled individual. The motion does not state whether the State of Montana objects to this request for an out-of-time appeal, but no objection has been filed.

In an affidavit attached to the motion for an out-of-time appeal, the Appellate Defender Office's paralegal and office manager states she is responsible for filing all notices of appeal and transcript requests for that office and that, due to the manner in which this case was transferred to her office along with the fact that the case record is sealed, she did not receive the information necessary for filing a notice of appeal until one day after the last day allowed for filing a notice of appeal.

M. R. App. P. 4(6) provides that an out-of-time appeal will be allowed only in the infrequent harsh case under extraordinary circumstances amounting to a gross miscarriage of justice. Under the circumstances here presented, we deem it appropriate to grant the petition for leave to file an out-of-time appeal. Accordingly,

IT IS ORDERED that D.K.D.'s petition for leave to file an out-of-time appeal is GRANTED.

IT IS FURTHER ORDERED that D.K.D. shall file his notice of appeal within 10 days of the date of this Order. Thereafter, the Montana Rules of Appellate Procedure shall govern with respect to the filing of the record and briefs on appeal.

The Clerk is directed to provide copies of this Order to all counsel of record.

DATED this 2nd day of June, 2010.

William L. Bryant
Chief Justice

Michael C. Whelan

Frank R.
Gina Rice

Justices